

Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Danielle S. Futterman (DY 4228)
dfutterman@ipcounselors.com
Gabriela N. Nastasi
gnastasi@ipcounselors.com
EPSTEIN DRANGEL LLP
60 East 42nd Street, Suite 1250
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
The Pinkfong Company, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PINKFONG COMPANY, INC.,

Plaintiff

v.

ADS-SS, AGQT DIRECT, ALIGHT PRODUCT,
AONIMOWUJINDIAN US, BALLIZAO, BAOKKE,
BEAUTIFUL WEEKEND, BLOSSM, BOLMQHTS,
CSNSD, DHEKAEI, ESTARPRO, EVERGREEN FOR
YOU, GZJF-US-US,
HAIKOUWURUNXIAOSHOUYOUXIANGONGSI,
HFCKMYXGS, JICHANGZHOUXIANSUI, LEYUAN
STORE, LIZHENMENG, LKJHGFDGFJJGFJ,
MYRISAM, SATISFYING PARTY US, SLOZVNEG,
SZSLPKJ007, TENG YI DIRECT, TIHUPRLY, WSSERD-
US, XIAO WEN GIFT, YAMATCH®, YANQIU US,
YANXIN123, YOUWCW, ZHANG ZHEN JIN
COMMUNICATION EQUIPMENT STORED,
ZHANGJIEHAOMA OYIYOUXIANZERENGONGSI,
ZHENRONG BAIHUO, ZUZU BOOM and 佛山市万飞翔
商贸有限公司 a/k/a FOSHAN WANFEIXIANG
TRADING CO., LTD.,

Defendants


**CIVIL ACTION No.
23-cv-3793 (AS)**

**[PROPOSED]
FINAL DEFAULT
JUDGMENT AND
PERMANENT
INJUNCTION ORDER**

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiff	The Pinkfong Company, Inc.	N/A
Defendants	ADS-SS, AGQT Direct, Alight Product, AONIMOWUJINDIAN US, Ballizao, BaoKKe, Beautiful Weekend, Blossm, BOLMQHTS, csnsd, Dhekaei, eStarpro, Evergreen for you, GZJF-US-US, haikouwurunxiaoshouyouxiangongsi1, HFCKMYXGS, jichangzhouxiansui, LEYUAN Store, lizhenmengd, lkjhfgdfjgjfj, MYRISAM, Satisfying Party US, SLOZVNEG, szslpkj007, TengYi Direct, Tihuprly, WSSERD-US, xiao wen gift, YAMATCH®, Yanqiu us, yanxin123, YOUCWC, Zhang Zhen Jin communication equipment stored, zhangjiehaomaoyiyouxianzerengongsi, zhenrong baihuo, ZUZU BOOM and 佛山市万飞翔商贸有限公司 a/k/a Foshan Wanfeixiang Trading Co., Ltd.	N/A
Defaulting Defendants	ADS-SS, AONIMOWUJINDIAN US, Ballizao, BaoKKe, Beautiful Weekend, Blossm, BOLMQHTS, csnsd, Dhekaei, Evergreen for you, GZJF-US-US, haikouwurunxiaoshouyouxiangongsi1, HFCKMYXGS, jichangzhouxiansui, LEYUAN Store, lizhenmengd, lkjhfgdfjgjfj, Satisfying Party US, SLOZVNEG, TengYi Direct, WSSERD-US, xiao wen gift, YAMATCH®, Yanqiu us, yanxin123, YOUCWC, Zhang Zhen Jin communication equipment stored, zhangjiehaomaoyiyouxianzerengongsi, zhenrong baihuo, ZUZU BOOM and 佛山市万飞翔商贸有限公司 a/k/a Foshan Wanfeixiang Trading Co., Ltd.	N/A
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York	N/A
Sealing Order	Order to Seal File entered on May 1, 2023	Dkt. 1
Complaint	Plaintiff's Complaint filed on May 5, 2023	Dkt. 7

Application	Plaintiff's <i>ex parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on May 5, 2023	Dkts. 11-13
Yang Dec.	Declaration of Su Jeong Yang in Support of Plaintiff's Application	Dkt. 12
Nastasi Dec.	Declaration of Gabriela N. Nastasi in Support of Plaintiff's Application	Dkt. 13
TRO	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery	Dkt. 4
User Account(s)	Any and all websites and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Baby Shark Content	One of Pinkfong's most successful creations, which is the Pinkfong "Baby Shark" song and viral music video with characters	N/A
Baby Shark Applications	U.S. Trademark Serial Application Nos.: 88/396,786 for registration of "PINKFONG BABY SHARK" for a variety of goods in Class 25; 88/529,984 for registration of "PINKFONG" for a variety of goods in Classes 2, 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32 and 41; 88/530,086 for registration of "BABY SHARK" for a variety of goods in Classes 2, 3, 9, 14, 16, 18, 20, 21,	N/A

	24, 25, 26, 27, 28, 29, 30, 32 and 41; 88/594,141 for “PINKFONG” for a variety of goods in Class 5; and 88/594,122 for “BABY SHARK” for a variety of goods in Class 5	
Baby Shark Registrations	<p>U.S. Trademark Registration Nos.: 6,834,502 for “BABY SHARK” for a variety of goods in Classes 2, 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29 and 30; 5,803,108 for “BABY SHARK” for a variety of goods in Class 28; 6,488,471 for “BABY SHARK” for a variety of goods in Classes 9, 16, 25 and 41; 4,515,238 for “BABY SHARK U.S.A” for a variety of goods in Class 28; 5,483,744 for “PINKFONG” for a variety of goods in Classes 3 and 21; 5,327,527 for “PINKFONG” for a variety of goods in Classes 9, 16 and 28; 4,993,122 for “PINKFONG” for a variety of goods in Classes 9 and 25; 6,487,494 for “PINKFONG” for a variety of goods in Classes 2, 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 30 and 41; 6,138,374 for pinkfong for a variety of goods in Class 41; 6,337,210 for “PINKFONG BABY SHARK” for a variety of goods in Class 21; 6,343,519 for “PINKFONG BABY SHARK” for a variety of goods in Class 25; 6,503,438 for “PINKFONG” for a variety of goods in Class 5; and</p>  <p>6,495,600 for pinkfong for a variety of goods in Classes 9 and 41</p>	N/A
Baby Shark Marks	The marks covered by the Baby Shark Registrations and Baby Shark Applications	N/A
Baby Shark Works	U.S. Copyright Registration Nos.: VA 2-130-856, covering Baby Shark; VA 2-130-847, covering Daddy Shark; VA 2-130-854, covering Mommy Shark; VA 2-131-983, covering Pink Fong Mascot	N/A
Baby Shark Products	A wide variety of consumer products created via an extensive worldwide licensing program such as toys, sound books, t-shirts, associated with and/or related to the Baby Shark Content	N/A
Counterfeit Products	Products bearing or used in connection with the Baby Shark Marks and/or Baby Shark Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Baby Shark Marks and/or Baby Shark Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark	N/A

	Works and/or products that are identical or confusingly or substantially similar to the Baby Shark Products	
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Amazon.com, Inc., Amazon Payments, Inc. ("Amazon Pay"), PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer") and PingPong Global Solutions, Inc. ("PingPong")	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by Amazon, such as Amazon.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Plaintiff's Motion for Default Judgment	Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendants filed on October 5, 2023	TBD
Nastasi Aff.	Affidavit by Gabriela N. Nastasi in Support of Plaintiff's Motion for Default Judgment	TBD

This matter comes before the Court by motion filed by Plaintiff for the entry of final judgment and permanent injunction by default against Defendants for Defendants' trademark infringement, trademark counterfeiting and copyright infringement, false designation of origin, passing off and unfair competition and related state and common law claims arising out of Defendants' unauthorized use of Plaintiff's Baby Shark Marks and/or Baby Shark Works including, without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Memorandum of Law and Affidavit of Gabriela N. Nastasi in support of Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendants, the Certificates of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defaulting Defendants' Liability

- 1) ORDERED, ADJUDGED AND DECREED that judgment is granted in favor of Plaintiff as to the First, Second and Fifth Causes of Action pleaded in the Complaint (trademark counterfeiting, trademark infringement and copyright infringement).

II. Damages Awards

- 1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that because it would serve the compensatory and punitive purposes of the Lanham Act's prohibitions on trademark counterfeiting and infringement and the Copyright Act's prohibitions on willful infringement,

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

and because Plaintiff has sufficiently set forth the basis for the statutory damages requested in its Motion for Default Judgment, the Court awards Plaintiff Fifty Thousand U.S. Dollars (\$50,000.00) in statutory damages against each of the thirty-one (31) Defaulting Defendants pursuant to 15 U.S.C. § 1117(c) and/or 17 U.S.C. § 504(c), as well as post-judgment interest at the statutory rate set forth in 28 U.S.C. § 1961(a).

III. Permanent Injunction

- 1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defaulting Defendants, their respective officers, agents, servants, employees and all persons acting in concert with or under the direction of Defaulting Defendants who receive actual notice of this Order are permanently enjoined and restrained from engaging in any of the following acts or omissions in the United States (with the exception of the acts and omissions described in paragraphs E and F below, which shall apply worldwide):
 - A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Baby Shark Marks and/or Baby Shark Works and/or marks and/or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Baby Shark Marks and/or Baby Shark Works;
 - B. directly or indirectly infringing in any manner Plaintiff's Baby Shark Marks and/or Baby Shark Works;
 - C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Baby Shark Marks and/or Baby Shark Works to identify any goods or services not authorized by Plaintiff;

- D. using Plaintiff's Baby Shark Marks and/or Baby Shark Works, or any other marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works on or in connection with manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
 - E. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products; (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and
 - F. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.
- 2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defaulting Defendants must deliver up for destruction to Plaintiff any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defendants that infringe any of Plaintiff's trademarks, copyrights or other rights including, without limitation, the Baby Shark Marks and/or Baby Shark Works, or bear any marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works pursuant to 15 U.S.C. § 1118;

3) IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Defaulting Defendants and all persons in active concert and participation with them who receive actual notice of this Order, including the Third Party Service Providers and Financial Institutions who satisfy those requirements and are identified in this Order, are permanently enjoined and restrained from:

- A. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to Defaulting Defendants' Frozen Assets and Defaulting Defendants' Financial Accounts;
- B. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs III(1)(A) through III(3)(A) above and III(4)(A) below.

4) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Third Party Service Providers are permanently enjoined and restrained from:

- A. providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts; and
- B. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs III(1)(A) through III(2) and III(3)(A) through III(3)(B) and III(4)(A) above.

IV. Dissolution of Rule 62(a) Stay and Asset Turnover Pursuant to N.Y. C.P.L.R. § 5225

1) IT IS FURTHER ORDERED, as sufficient cause has been shown, the 30-day automatic stay on enforcing Plaintiff's judgment, pursuant to Fed. R. Civ. Pro. 62(a) is hereby dissolved.

- 2) IT IS FURTHER ORDERED, that one (1) week after final judgment is entered, Plaintiff will either: (1) file a motion for an asset turnover pursuant to N.Y. C.P.L.R. § 5225; or (2) notify the Court of its intention not to proceed with a request for an asset turnover so the case may be closed.


V. Miscellaneous Relief

- 1) Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;
- 2) The Court releases the Five Thousand U.S. Dollar (\$5,000.00) security bond that Plaintiff submitted in connection with this action to counsel for Plaintiff, Epstein Drangel, LLP, 60 East 42nd Street, Suite 1250, New York, NY 10165; and
- 3) This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

The Clerk of Court is directed to enter judgment and close the case.

SO ORDERED.

SIGNED this 8 day of November, 2023, at _____.m.



HON. ARUN SUBRAMANIAN
UNITED STATES DISTRICT JUDGE